UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JAMES R. KNOWLES,

Plaintiff,

v.

CHRIS GOODNIGHT, et al.,

Defendants.

Case No. 21-01222 EJD (PR)

ORDER OF DISMISSAL

Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 against medical officials at the Napa State Hospital ("NHS"). On June 30, 2021, the Court dismissed the complaint with leave to amend for Plaintiff to correct several deficiencies in the pleading. Dkt. No. 8. Plaintiff filed an amended complaint. Dkt. No. 9. For the reasons discussed below, the amended complaint is dismissed with leave to amend.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a

governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

B. Plaintiff's Claims

In the original complaint, Plaintiff claimed that he was sexually harassed by Defendant Gwyn Coulie (P.M. Shift Lead on Unit T-12) at NHS for months from August 2019 to the present day, and that Defendants Coulie, Chris Goodnight, Dr. Lee Wei, Dr. Nathaniel Chapman, and Mike Thompson conspired to cover up her actions for months thereafter. Dkt. No. 1 at 6. Plaintiff claimed Defendants said he would take legal action against them, Defendants threatened to and did take adverse actions against him during a conference meeting on January 12, 2021, including adjusting his medication and disciplinary measures. Id. at 7-8. Plaintiff claimed their actions violated his rights under the First Amendment because they conspired to "[quiet him] because [he] was going to file lawsuit for Defendants covering up Gwyn[] Coulie['s] sexual harassment." Id. at 5.

In an initial review of the complaint, the Court construed the allegations as attempting to state a retaliation claim but found the allegations were deficient. Dkt. No. 8 at 2-3. The Court dismissed the retaliation claim with leave to amend. Id. at 3. The Court also advised Plaintiff that he could not proceed with a conspiracy claim against Defendants unless he first established an underlying constitutional violation and a meeting of the minds. Id. The Court found a cognizable claim against Defendant Coulie for sexual harassment and advised Plaintiff that he must include the claim in the amended complaint

if he wished to pursue it. Id. at 4. Lastly, Plaintiff was advised that he must have exhausted all claims raised in this action before he could proceed. Id. at 5.

In the amended complaint, Plaintiff again names Defendants Chris Goodnight, Nathaniel Chapman, and Mike Thompson, as in the original complaint, and includes two new Defendants: Dane B. Morley and Dominic Hamilton. Dkt. No. 9 at 2. He does not include Defendants Lee Wei and Gwyn Coulie from the original complaint. Accordingly, Defendants Wei and Coulie are no longer parties to this action, and the claims against them are no longer a part of this action. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.1992).

Plaintiff has failed to correct the deficiencies from the original complaint. Plaintiff again attempts to assert a retaliation claim and conspiracy claim against Defendants Goodnight, Chapman, Thompson, and Morley for their actions on January 12, 2021, but this time for filing a grievance against newly named Defendant Nurse Dominic Hamilton. Dkt. No. 9 at 4. Plaintiff has already been advised of the following legal standard for stating a retaliation claim. Id. at 2-3. "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted). As before, Plaintiff's allegations are sufficient to satisfy the first three elements based on the allegations that Defendants placed him in segregation because he filed a grievance against Defendant Hamilton. Dkt. No. 9 at 6. However, as in the original complaint, there are no allegations regarding the last two elements, i.e., that Defendants' conduct chilled the exercise of Plaintiff's First Amendment rights and did not reasonably advance a legitimate correctional goal. The conspiracy claim is also deficient because there is no underlying constitutional violation. Lacey v. Maricopa County, 693 F.3d 896, 935 (9th Cir. 2012) (en

banc). Plaintiff was already afforded one opportunity to amend, and the Court finds no good cause to grant him another opportunity based on the same event, i.e., the January 12, 2021 conference meeting. Wagh v. Metris Direct, Inc., 363 F.3d 821, 830 (9th Cir. 2003) (district court's discretion to deny leave to amend particularly broad where plaintiff has previously filed an amended complaint); Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992). Accordingly, the retaliation and conspiracy claims must be dismissed for failure to state a claim.

With regards to Defendant Hamilton, Plaintiff claims that she "assaulted and battered" him while taking his blood pressure on December 22, 2020. Dkt. No. 9 at 4. Specifically, Plaintiff claims Defendant Hamilton "pushed [him] back into the chair" while attempting to take his blood pressure as he explained "what treatment he takes." Id. Plaintiff claims she was argumentative and belligerent, and that he felt scared and upset. Id. at 4-5. Plaintiff also claims that Defendant Hamilton is frequently unreasonable, rude, disrespectful, and talks behind his back. Id. at 7. These allegations, even if true, are insufficient to state a claim under § 1983. Assuming that Plaintiff is entitled to at least the same protections as a pretrial detainee against excessive force under the Fourteenth Amendment, he must show only that the "force purposely or knowingly used against him was objectively unreasonable." Kingsley v. Hendrickson, 576 U.S. 389, 397 (2015). Here, the only force Plaintiff alleges is being pushed back into the chair when he was not being cooperative. A non-exhaustive list of considerations that may bear on the reasonableness of the force used include "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting." Kingsley, 576 U.S. at 397. In light of the fact that Plaintiff is receiving treatment at the NSH for a mental illness, it cannot be said that Defendant Hamilton used unreasonable force in attempting to get Plaintiff to comply with a simple blood pressure

check while he was being uncooperative. Nor does Plaintiff allege any physical injury from being pushed back into his chair to indicate that it was in any way excessive. Accordingly, Plaintiff fails to state a claim of excessive force against Defendant Hamilton.

With regard to the rest of Defendant Hamilton's alleged behavior, allegations of verbal harassment and abuse fail to state a claim cognizable under 42 U.S.C. § 1983. See Freeman v. Arpaio, 125 F.3d 732, 738 (9th Cir. 1997) overruled in part on other grounds by Shakur v. Schriro, 514 F.3d 878, 884-85 (9th Cir. 2008); Rutledge v. Arizona Bd. of Regents, 660 F.2d 1345, 1353 (9th Cir. 1981), aff'd sub nom. Kush v. Rutledge, 460 U.S. 719 (1983); see, e.g., Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996), amended 135 F.3d 1318 (9th Cir. 1998) (disrespectful and assaultive comments by prison guard not enough to implicate 8th Amendment); Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987) (directing vulgar language at prisoner does not state constitutional claim); Burton v. Livingston, 791 F.2d 97, 99 (8th Cir. 1986) ("mere words, without more, do not invade a federally protected right"); Batton v. North Carolina, 501 F. Supp. 1173, 1180 (E.D.N.C. 1980) (mere verbal abuse by prison officials does not state claim under § 1983). Accordingly, Plaintiff fails to state a claim for relief based on Defendant Hamilton's verbal abuse.

Lastly, Plaintiff clearly indicates that he did not exhaust any of the claims raised in the amended complaint. Dkt. No. 9 at 2. Plaintiff has already been advised that he must exhaust administrative remedies before filing suit. Dkt. No. 8 at 5. The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996) ("PLRA"), amended 42 U.S.C. § 1997e to provide that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). In the amended complaint, Plaintiff states that he is "still trying to contact them for response" with regards to the NSH's grievance procedures. Dkt. No. 9 at 1. Accordingly, dismissal would also be appropriate for failure

to exhaust administrative remedies before filing suit. See Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc). However, because the amended complaint fails to state any cognizable claim, exhaustion would be futile.

CONCLUSION

For the foregoing reasons, the amended complaint is **DISMISSED** with prejudice for failure to state a claim for which relief can be granted.

IT IS SO ORDERED.

Dated: 11/24/2021

EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California